

## **REMARKS**

Claims 1-5, 7-11, 13, and 15-19, all the claims pending in the application, stand rejected on prior art grounds. Claims 1, 7, 13, and 15 are amended herein. Applicants respectfully traverse these rejections based on the following discussion.

### **I. Specification**

On December 12, 2006, the Applicants submitted a substitute paragraph [0038] corresponding to page 14, lines 4-11 of the specification. The current Office Action erroneously concludes that there are no changes between these two versions, and accordingly did not enter the new paragraph. However, the changes between this substitute paragraph and the original paragraph [0038] are clearly indicated in the December 12, 2006 amendment. The difference between the two paragraphs is that the substitute paragraph [0038] includes punctuation at the end of the paragraph. This was indicated by the inclusion of a period that is underlined to reflect its addition into the new paragraph [0038]. As such the final sentence of substitute paragraph [0038] reads: Thus, even during the period of time that the distributed upgrade is occurring on multiple nodes, communication packets between different systems that may be at different levels can continue to flow and be understood, thereby allowing the system 500 to continue to operate.

Therefore, the Applicants respectfully request that the Examiner review the previously submitted amendment of December 12, 2006, note the change, and enter the substitute paragraph [0038] given in the December 12, 2006 amendment.

## **II. The Prior Art Rejections**

Claims 1-5, 7-11, 13, and 15-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Moore et al. (U.S. Publication No. 2003/0092438), hereinafter referred to as “Moore,” in view of Sinander (U.S. Patent No. 6,385,770). Applicants respectfully traverse these rejections based on the following discussion.

Moore teaches a method of ensuring stability of wireless communications that are in danger of suffering a service disconnect due to a processor software upgrade or downgrade. The method includes the use of a control block which contains the version number of the application operating on both the primary and secondary processors. The primary controller writes state data to its control block and a checkpointing service replicates the data to the control block of the updated secondary processor. The control block coordinates appropriate version format conversions and allows the secondary processor to read the saved state data and assume control of the wireless communications with little or no loss of service.

Sinander teaches a method and apparatus for efficient upgrading of a software system by a plurality of versions. The invention allows upgrades from an arbitrary software system version to another arbitrary subsequently released software system version at reduced cost and down time by executing an upgrade framework including all upgrade tasks identical for individual upgrade steps between two subsequent software system versions and a plurality of upgrade contents including tasks specific for each upgrade step. The invention allows to upgrade a software system in a real-time environment using a source system operating with an old software version and a target system for operating with the new software version and allows to handle static as well as dynamic data.

However, the Applicants' claimed invention, as provided in amended independent claims 1, 7, 13, and 15 contain features, which are patentably distinguishable from the prior art references of record. Specifically, claims 1, 7, 13, and 15 generally recite, in part, "wherein both upgrade processes and both downgrade processes occur without disruption of communication between said nodes." These features are neither taught nor suggested in either Moore or Sinander. Support of this feature of the Applicants' claimed invention can be found in the Applicants' specification (see page 6, lines 3-8; page 9, lines 19-22; page 10, lines 12-14; page 13, line 22 through page 14, line 11; and page 17, lines 2-7 of the Applicants' specification).

In fact Moore says nothing about multiple upgrade processes (as admitted on page 6 of the Office Action), therefore Moore is incapable of having both upgrade processes occur without disruption of communication between nodes. Furthermore, Sinander actually teaches away from the Applicants' claimed invention because in Sinander there is a system downtime that occurs during the upgrade procedures (see Sinander col. 2, lines 22-26; col. 2, lines 38-39; col. 5, lines 27-31; col. 5, lines 43-49; and col. 7, lines 44-47). In fact, one of the objects of Sinander is to merely reduce the number of downtime steps that occur thereby reducing the overall downtime that occurs during an upgrade procedure, but it is not intended to completely eliminate the communication downtime. Conversely, the Applicants' claimed invention operates with the complete elimination of communication disruption (i.e., without disruption of communication). Additionally, col. 2, lines 13-15 of Sinander suggests that its system and method operates in a single upgrade procedure rather than two separate procedures as provided by the Applicants' claimed invention. Accordingly, Sinander teaches away from the Applicants' claimed invention in multiple regards, and if combined with Moore would fail to teach or suggest the features

defined by the Applicants' claims. Therefore, the Applicants' claims are indeed patentable under 35 U.S.C. §103(a).

Accordingly, Moore in combination with Sinander, fails to teach all elements of the Applicants' claimed invention, and as such, the Applicants' independent claims 1, 7, 13, and 15 are patentable over Moore in combination with Sinander. Similarly, the Applicants' dependent claims 2-5, 8-11, and 16-19 are similarly patentable over Moore in combination with Sinander, based on their dependence from patentable independent claims and for the additional features they teach. Moreover, the Applicants note that all claims are properly supported in the specification and accompanying drawings. The Applicants respectfully request entry of this amendment as the amended claim language was made based on the new rejection given in the Office Action and in response to the arguments presented in the Office Action, which the Applicants have only had one opportunity to rebut. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections.

### **III. Formal Matters and Conclusion**

With respect to the rejections to the claims, the claims have been amended, above, to overcome these rejections. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections to the claims.

In view of the foregoing, Applicants submit that claims 1-5, 7-11, 13, and 15-19, all the claims presently pending in the application, are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary. Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

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